

## **REMARKS**

Reconsideration and withdrawal of the rejections of the claimed invention is respectfully requested in view of the amendments, remarks and enclosures herewith, which place the application in condition for allowance.

### **I. STATUS OF CLAIMS AND FORMAL MATTERS**

Claims 1-31 are still pending in this application.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112. The amendments of the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

### **II. THE 35 U.S.C. 102(e)/103(a) REJECTIONS HAS BEEN OVERCOME**

Claims 1, 3-5, 6, 15, 14, 17, 23, 24, 25-27 and 30-31 were rejected as allegedly being anticipated by **Fox (U.S. Patent Application Publication 2005-0069575 -“Fox”)** when taken with Mitchell (US 1,648,778 - “Mitchell”).

Claims 2, 10, 16, 18-20, 22, 28, and 29 were rejected as allegedly being obvious by **Fox**.

Claims 7-9 were rejected as allegedly being obvious by **Fox** as applied to claim 1 and further in view of Colgate-Palmolive (GB 1,551,578 -“Colgate”).

Claims 11-12 and 21 were rejected as allegedly being obvious by **Fox** as applied to claim 1 and further in view of Schulerud (US 2,525,081 - “Schulerud”) when taken with Mitchell.

Claim 13 was rejected as allegedly being obvious by **Fox** as applied to claim 1 and further in view of Mabley (US 2,356,168 - “Mabley”). While the applicants believe that the claimed invention is neither anticipated nor obvious in light of the above rejections, the applicants request reconsideration of this rejection for the following reason.

**Fox is ineligible as prior art because applicants have now perfected their claim for foreign priority with English language translation of DE 102 41 597.8**

The Fox reference relied upon is a continuation of U.S. Application SN: 10/267,235 which was filed on **9 October 2002** and represents the earliest claim for priority for Fox.

This application is a National Phase application of PCT/EP03/09712 (filed on 2 September 2003) which claimed foreign priority to DE 102 41 597.8 (filed on 7 **September 2002**).

In order to perfect the claim for foreign priority, the applicants are concurrently submitting a certified English language translation of DE 102 41 597.8 ("the translation") with a statement that the translation of the certified copy is accurate. Since the translation is substantially the same as the specification of the present application, the applicants are entitled to the earlier priority date.

Therefore, the Fox reference is ineligible for use as prior art for the purposes of establishing anticipation and obviousness because the applicants' priority claim predates Fox's priority claim. *See* 37 CFR 1.55(4)(i)(B).

When Fox is removed as prior art from the above rejections, there would be no remaining rejection of record for claims 1-6, 10, 14-20 and 22-31.

For claims 7-9, 11-13 and 21, the remaining secondary references alone or in combination does not establish a holding of *prima facie* obviousness in the absence of Fox.

For these reasons, claims 1-31 is neither anticipated nor obvious over the remaining prior art of record and the rejections of record can be withdrawn.

**CONCLUSION**

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution. The Commission is authorized to charge any fee occasioned by this paper, or credit any overpayment of such fees, to Deposit Account No. 50-0320.

Respectfully submitted,  
FROMMER LAWRENCE & HAUG LLP

By: /Howard C. Lee/  
Marilyn M. Brogan    Howard C. Lee  
Reg. No. 31,223      Reg. No. 48,104  
Telephone:      (212) 588-0800  
Facsimile:      (212) 588-0500